

**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
AGENCY CASE NO. 2008-AH- 274**

COMMONWEALTH OF KENTUCKY, EX. RE. THE
COMMISSIONER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS

PETITIONER

V.

PAUL KELLOGG

RESPONDENT

Serve:
Paul W. Kellogg
408 Talbott Drive
Wilmore, KY. 40390

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**AGREED ADMINISTRATIVE ORDER BANNING RESPONDENT FROM THE
SECURITIES INDUSTRY IN KENTUCKY**

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The Commonwealth of Kentucky, by and through the Commissioner of the Department of Financial Institutions, hereby enters this Agreed Administrative Order banning the Respondent, Paul W. Kellogg, from the securities industry in Kentucky for life. The basis for this Order is as follows:

1. The Department of Financial Institutions ("DFI") is the agency of Kentucky state government charged with enforcement of the provisions of KRS Chapter 292 (the Kentucky "Securities Act") and the rules and regulations enacted thereunder.
2. Paul W. Kellogg ("Kellogg") is an individual residing and doing business in the Commonwealth of Kentucky and residing at 408 Talbott Drive, Wilmore, Kentucky 40390.

3. Kellogg is not now and has never been, registered with the Division as an Investment Adviser or as an Investment Adviser Representative pursuant to the Securities Act.
4. Kellogg is also not and has never been registered as an agent with any broker/dealer pursuant to the Securities Act.
5. On or about October 30, 2007, in response to a printed invitation (the “invitation”) received through the United States mail, Ronda Paul, a certified examiner from the Division attended a lunchtime seminar presented by Kellogg at the Chophouse in Lexington, Kentucky.
6. The invitation requested that invitees “join us for a **FREE GOURMET MEAL** immediately following our **Retirement Planning Workshop.**” The invitation also stated that invitees would learn how to protect their assets, reduce tax on their Individual Retirement Accounts (“IRAs”), and learn how to trade stocks and mutual funds without commissions.
7. At the “Retirement Planning Workshop,” Kellogg offered invitees investment, financial and estate planning advice, compared recognized financial instruments such as mutual funds to indexed annuities and encouraged invitees to: move their Keogh, IRA and other retirement monies and investments to his company; convert those investments into Fixed Indexed Annuities sold by his company; and bring their most recent brokerage account statements to their meetings with him. Kellogg also offered to prepare investment plans for a flat fee of \$500 per investor.
8. Following the October 30, 2007 “Retirement Planning Workshop,” the Division opened an investigation of Kellogg’s activities and requested a meeting with Kellogg, which took place on November 27, 2007.

9. On the basis of the written materials disseminated by Kellogg, the representations made by Kellogg at the workshop, the statements made by Kellogg to the Division on November 27, 2007 and other information furnished by Kellogg either at or subsequent to the meeting on November 27, 2007, the Division, through certified examiner John Cullen, advised Kellogg first orally and later in writing that he was in violation of the Securities Act by acting as an Investment Adviser. In its letter dated December 17, 2007 and delivered by certified mail, the Division further advised Kellogg “[a]s we discussed, you must discontinue holding seminars and providing materials in which you are offering investment advice until you become properly registered [as an investment adviser].”
10. Subsequent to the November 27, 2007 meeting, Kellogg informed the Division that he intended to take the Series #65 Uniform Investment Advisor Law Examination in order to become eligible to register as an Investment Adviser and to legally engage in the investment advisory business.
11. On January 24, 2008, Kellogg telephoned the Division to inform it that he had passed the Series #65 Examination and was going to be registered with Redhawk Investment Advisors, an investment adviser registered with the State of Minnesota.
12. In early February, 2008, Ronda Paul, a certified examiner with the Division received through the United States mail another printed invitation for yet another “free gourmet meal and workshop” from Kellogg to discuss retirement and financial planning. The free lunches were scheduled for February 12, 13 and 26, 2008 at the Bella Notte restaurant in Lexington, Kentucky.

13. The following statement appears at the bottom of the invitation: "Securities and Investment Advisory Services offered through NFP Securities, Inc., a Broker/Dealer, Member NASD/SIPC, and a Federally Registered Investment Advisor. Paul Kellogg & Associates, Inc. is an affiliate of NFP Securities, Inc. and a subsidiary of National Financial Partners Corp., the parent company of NFP Securities, Inc. Neither NFP Securities, Inc. nor Paul Kellogg & Associates, Inc. are affiliated with Journeymasters."
14. NFP Securities, Inc. ("NFP") subsequently informed the Division, in writing, that the Defendant was not registered as an Investment Adviser Representative with NFP or otherwise associated with NFP.
15. Accordingly, at the commencement of the first of a series of free lunch seminars on Tuesday, February 12, 2008, the Division served the Defendant with a Cease and Desist Order. In response to the entry of the Order, Defendant responded by letter that he had no objection to the relief requested would cancel all previously scheduled and future seminars and would otherwise refrain from any investment advisory activities unless and until he was legally registered to do so with the Division. No hearing was requested and, a Final Cease and Desist Order was entered on March 11, 2008. The Order directed Defendant to cease engaging in any conduct or activity which constitutes engagement in the investment advisory business until and unless he was licensed to engage in that business.
16. Subsequent to the entry of the Final Cease & Desist Order, the Defendant advised the Division that he intended to affiliate with another investment adviser registered with the Division. On June 17, 2008, Kellogg's application for registration (the

“application”) as an investment adviser representative of Precision Investment Advisory, LLC was filed with the Division.

17. On or about June 26, 2008, while that application was still pending and under consideration by the Division, the Division received an investor complaint against Kellogg. That complaint by Anna Craigmyle alleged that she and her husband were solicited by Kellogg in mid-June, 2008. In his initial contact with the Craigmyles, Kellogg claimed to be working with attorney, Walter Cox, who had previously prepared a living trust document for Mr. Craigmyle. Kellogg represented that he was visiting the Craigmyles on behalf of Mr. Cox to review her financial information in order to ensure that the living trust was properly funded and to discuss living wills for them.
18. However, according to Mrs. Craigmyle, Kellogg did not discuss a living will, but instead advised her that their IRA, (which was funded by a variable annuity product purchased the previous year) and which had been placed into the living trust corpus, was the worst investment she could possibly have. He then attempted to convince her to sell her variable annuity, which is a security, and purchase an equity indexed annuity product through the company which he was affiliated with.
19. Kellogg subsequently arranged a meeting in his Lexington office with the Craigmyles to discuss the subject further. At that meeting, Kellogg presented the Craigmyles with a document, which he had prepared. A copy of this document is attached as Exhibit F. In that document, entitled “Summary of Craigmyle,” Kellogg states that they “will lose 40% of their IRA money. . . The financial advisor has put you in the worst investment you could be in for an IRA. . . All of your money in the Variable

Annuity is at risk! That mean you can lose money. For example you could end up with half your money if the market goes down like it did in 2000, 2001, and 2002. You have a rider on your variable annuity that pays a death benefit of 7 percent. . . This will destroy all of your money. Solution. Move your money to Aviva, which guarantees the "Stretch IRA" in writing. This will protect your money from losing 40%. Do this with Paul Kellogg." Shortly after leaving this meeting, the Craigmyle's apparently decided, as stated in their complaint, "not [to] go with Mr. Kellogg's company, Aviva" because they "Just don't think everything is right. Had a bad feeling." Subsequently, they filed their investor complaint with the Division.

20. Following receipt of the investor complaint and multiple telephone conversations with Mrs. Craigmyle, the Division requested a meeting with Kellogg and Doug Hawkins, the managing member of Precision Investment Advisory, LLC. Hawkins attended the meeting between Kellogg and the Craigmyle's in Lexington. The Division also advised Hawkins by letter of July 1, 2008 that it was "placing the application of Mr. Kellogg as an investment adviser representative of Precision on hold pending the investigation and resolution of this complaint."
21. At that meeting, which occurred on July 17, 2008, representatives of the Division interviewed Hawkins and Kellogg separately. In his interview, Hawkins acknowledged that the written "summary" was prepared by and presented to the Craigmyle's by Kellogg, and that Kellogg took the lead in the sales presentation.
22. In his separate interview, selected portions of the 94-page transcript of which are attached as Exhibit H, Kellogg ultimately acknowledged that he authored the written summary and presented it to the Craigmyle's. He admitted that he knew that variable

annuities were securities. He also acknowledged that attorney Cox had provided him with a list of all of his living trust clients for the purpose of Kellogg's contacting those clients. Kellogg stated that he had in fact contacted some but not all of the clients on the list, including the Craigmyles. On numerous occasions during the interview, Kellogg stated that he was doing the right thing for these clients and that he would and/or will do it again.

23. The Division has asserted that Kellogg's conduct in soliciting the Craigmyles, in advising them regarding the sale of securities in their IRA and the purchase of one of his products, for which he would have received a substantial commission, was all in clear violation of the registration provisions of the Securities Act and of the terms of the Cease and Desist Order.
24. On September 5, 2008, the DFI filed a Verified Complaint for Injunctive Relief in the Franklin Circuit Court, Division 1, Civil Action No. 08-CI-1482 to enjoin Kellogg from any further violations of the Securities Act and to protect Kentucky investors. The action is entitled Commonwealth of Kentucky v. Paul Kellogg. Simultaneous with the filing of the Complaint, the DFI filed a Motion for Temporary Restraining Order.
25. On September 8, 2008 at 10:15 a.m., following a hearing on the record in open court, the Franklin Circuit Court entered a Temporary Restraining Order (the "Order") against Kellogg in Civil Action No. 08-CI-1482. The Order provided that "Paul W. Kellogg, personally; and through any business entities, partners, agents, officers, members, attorneys, and any person in active concert or participation with him, is hereby RESTRAINED and prohibited from any and all activity or conduct in or from

the Commonwealth of Kentucky from engaging in the investment adviser business in violation of the terms and prohibitions of the Cease & Desist Order, pending a final judgment in this action. Defendant is FURTHER RESTRAINED and prohibited from offering or holding himself out as an investment adviser or broker/dealer or as being affiliated with an investment adviser or broker/dealer, pending a final judgment in this action. Defendant is FURTHER RESTRAINED from engaging in any activity in violation or contravention of any other provision of the Securities Act pending further orders of the Court, which may include the entry of a final judgment in this action.”

26. For the purpose of avoiding the imposition of further, more severe sanctions through the judicial process by Kellogg and for the purpose, on the part of the DFI of permanently resolving what has become an ongoing series of violations, the parties agree to the entry of this Agreed Administrative Order upon the terms and conditions set forth below. By entering into this Agreed Administrative Order, the parties recognize that Kellogg neither admits nor denies the DFI’s allegations as they are contained in the Verified Complaint and are restated in this Order, but enters into this Agreed Administrative Order solely for the purpose of avoiding further litigation.
 27. Respondent acknowledges that he has had an opportunity to seek the advice of counsel and knowingly and willingly enters into this Agreed Administrative Order; Respondent consents and acknowledges the jurisdiction of the Department of Financial Institutions over this matter and that this Agreed Administrative Order is a matter of public record and may be disseminated as such.
- NOW, THEREFORE**, upon mutual agreement of the parties hereto.

IT IS HEREBY ORDERED THAT:

1. Respondent, Paul W. Kellogg, personally; and through any business entities, partners, agents, officers, members, attorneys, and any person in active concert or participation with him, is hereby barred from the securities industry for life commencing upon the date of entry of this Agreed Administrative Order.
2. Specifically, the terms of this bar or lifetime ban are that: a) Respondent shall not sell, offer for sale, or attempt to encourage, advise or induce any other person to sell or liquidate a security in order to purchase any other investment product (including but not limited to an equity indexed annuity) with the purpose or intent of deriving a commission or profit from such sale, to or from the Commonwealth of Kentucky to any person, whether he or she be a Kentucky resident or non-resident of this state; a) Respondent shall not engage in the business of investment adviser in any manner, nor shall he hold himself out to the investing public as an investment adviser, an investment adviser representative, or as being affiliated or associated in any manner with an investment adviser or an investment adviser representative; c) Respondent shall not act as an agent or a solicitor of an investment adviser or an investment adviser representative; Respondent shall not be an officer, director, manager, or other control person or control affiliate of any entity that offers or sells securities or investments from Kentucky to non-Kentucky residents or to Kentucky residents unless such securities are properly registered pursuant to the Kentucky Securities Act or are properly exempted from the registration requirement of the Kentucky Securities Act; Respondent shall not act as an issuer agent of any entity selling securities in or from Kentucky; Respondent shall not, directly or indirectly, receive

commissions, remunerations, or financial benefits from the offer or sale of any securities or investments from Kentucky to any person, whether a Kentucky resident or not, or from the offer or sale of such securities or interests outside of Kentucky to Kentucky residents; Respondent shall not receive compensation, remuneration, dividends, gains, or income of any sort whatsoever, through any company or entity that he would not be permitted to receive directly pursuant to the terms of this Order.

3. For purposes of this Order, securities shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest in any profit sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or mineral rights, variable annuity, or equity indexed annuity after such time as such product may be determined to be a security by the Securities & Exchange Commission, or, in general, any interest or instrument commonly known as a "security."
4. Respondent shall not apply to the Division of Securities for any license or registration required under the Kentucky Securities Act to practice or participate in the securities industry in this state in any manner for a period of not less than five (5) years from the date of entry of this Order. Respondent may so apply for licensure or registration after such time, however, Respondent understands that the Division of Securities is under no obligation whatsoever to grant such a license or registration, either conditionally or not.
5. Should it appear to the Commissioner at any time subsequent to the entry of this Order that Respondent has engaged or is about to engage in any act or practice

constituting a violation of any provision of the Order or of the Kentucky Securities Act, the Commissioner may immediately seek all legal relief available, including but not limited to injunctive relief and sanctions through a action in the Franklin Circuit Court, with or without notice. In that event, Respondent consents to the jurisdiction of the Commissioner and the Franklin Circuit Court, consents to the institution of such action without prior notice, and consents to the entry of injunctive relief by the Franklin Circuit Court or any other Court of competent jurisdiction, upon application by the Commissioner.

6. Upon entry of this Agreed Order, the parties agree that the Civil Action for injunctive relief (Action No.08-CI-1482) shall, by agreement of the parties, be dismissed without prejudice. However, a copy of this Agreed Administrative Order shall be attached to and incorporated into any Order of Dismissal entered by the Court.

SO ORDERED this 19th day of NOVEMBER 2008.

by: James C. Strode
Charles Vice
Commissioner
Department of Financial Institutions

HAVE SEEN AND AGREED TO:

Paul W. Kellogg
Paul W. Kellogg, Respondent

James C. Strode, Director
James Strode, Director of Securities

